

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY THE
COUNTY OF SNOHOMISH TO EDWIN L.
BARBER,

G. A. HENDERSON,

Appellant,

v.

SNOHOMISH COUNTY and EDWIN L.
BARBER,

Respondents.

SHB No. 230

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the request for review of the granting of a substantial development permit by Snohomish County to Edwin L. Barber having come on regularly for hearing on November 15 and 16, 1976 in Everett, Washington, and appellant G. A. Henderson appearing through his attorney, Lewis A. Bell, and respondent Snohomish County appearing through its Deputy Prosecuting Attorney, Richard S. Lowry, and respondent permittee Edwin L. Barber appearing through his attorney, Bruce A. Keithly, and

1 the Board having heard the evidence, having examined the exhibits, and
2 having considered the contentions of the parties and having entered on
3 the 17th day of January, 1976 its proposed Findings of Fact, Conclusions
4 of Law and Order, and the Board having served said proposed Findings,
5 Conclusions and Order upon all parties herein by certified mail, return
6 receipt requested and twenty days having elapsed from said service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order and the Board being fully advised in the premises;
9 now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order dated the 17th day of
12 January, 1976, and incorporated by reference herein and attached hereto
13 as Exhibit A, are adopted and hereby entered as the Board's Final
14 Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 16th day of February, 1977.

16 SHORELINES HEARINGS BOARD

17 Art Brown
18 ART BROWN, Chairman

19 Robert E. Beaty
20 ROBERT E. BEATY, Member

21 W. A. Gissberg
22 W. A. GISSBERG, Member
23 Not available for signature

24 Rod Kerslake, Member

25 Chris Smith
26 CHRIS SMITH, Member

27 FINAL FINDINGS OF FACT,
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Did not participate

Ralph A. Beswick, Member

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FINDINGS OF FACT,
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AND ORDER

This matter, the request for review of the granting of a substantial development permit by Snohomish County to Edwin L. Barber was brought before the Shorelines Hearings Board, Art Brown, Chairman, W. A. Gissberg, Chris Smith, Robert E. Beaty, and Rod Kerslake on November 15 and 16, 1976 in Everett, Washington. Member William Johnson attended November 16, 1976. Hearing Examiner David Akana presided.

Appellant appeared by and through his attorney, Lewis A. Bell;

EXHIBIT A

respondent County appeared through Richard S. Lowry, Deputy Prosecuting Attorney; respondent permittee Barber appeared by and through his attorney, Bruce A. Keithly. Olympia court reporters Eugene E. Barker and Jennifer Roland recorded the proceeding.

Having heard the evidence, having examined the exhibits, and having considered the contentions of the parties, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

A shoreline substantial development permit was issued to respondent Barber by Snohomish County on June 21, 1976. The proposed development is located between the towns of Gold Bar and Index on the Skykomish River, a natural shoreline of statewide significance. The development is comprised of four elements. Element 1 (campground) allows a maximum of 88 camping sites and accessory structures and facilities on approximately 13 acres of land. Element 2 (residential) allows a maximum of 3 residential dwellings and accessory structures, and a one-half acre parking lot. Element 3 (residential) allows a maximum of 5 residential dwellings and accessory buildings on lots two acres or more in size. Element 4 (recreation and open space) consists of a recreational area upon which no permanent nor temporary structure can be established without County approval. The entire development will be constructed on a total of about 67 acres. The appeal in this matter directly concerns the the activities authorized in elements 1 and 2 and incidentally affects the remainder of the property.

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II

Respondent Barber intends to operate, under a KOA (Kampgrounds of America) franchise, a privately owned campground open to the public, on all or portions of the land in elements 1, 2 and 3. The campsite will have a patron capacity of 300 to 400 transient customers. Eighty-eight campsites of which about one-half are planned for camping trailers and motor homes and the remaining one-half for tenting equipment will be located within 13 acres of element 1. Most of the site is at the top of a sheer bluff elevated from the river by at least 40 feet. Thirty-two campsites will be located within 200 feet of the ordinary high water line. No campsites are located within 100 feet of the ordinary high water line. Other facilities located therein will be a swimming pool and lodge. Dirt roads presently exist on element 1 and would be enlarged and covered with gravel. Except for three pedestrian trails to the river, the river bank will not be disturbed. Water will be supplied from a well near the southern boundary of element 1. Three septic tank systems will provide sewage disposal for the entire campsite operation.

III

The Snohomish County Health District has given preliminary approval for the use of septic tank systems at the site. Notwithstanding this, the final design configuration of the project and expected use thereof must be submitted to the Health District for its final approval or disapproval. Even though a shoreline permit and conditional use permit have been issued, the Health District has final regulatory authority. Therefore, it may yet be determined by the Health District that because

of pollution considerations, the project shall not proceed. In any event, appellant has not proved that the Health District's preliminary approval is erroneous or that the final approval will not be forthcoming.

IV

The Skykomish River at or near the site is swift and rocky and can be dangerous to human health and safety. Some drownings apparently have occurred near the subject property. However, the unique and scenic river has been and continues to be attractive to the public, particularly to fishermen and boaters.

V

Presently, the narrow roadway and shoulders of the state highway which bisects the property pose a hazard for persons wishing to park their vehicles and walk to the river. In past years, the public has trespassed over subject property for the purpose of gaining access to the river. The owner (respondent Barber) has now fenced the area so as to discourage trespassers.

If constructed, the public parking area in element 2 as allowed by the permit would be available to the public for their use and for access to the river. A fee would be charged for such use.

VI

Under present zoning, a maximum of seven campsites per acre is allowed on subject property. By way of comparison, the evidence discloses that a maximum of 25 to 30 campsites per acre is acceptable by federal and industry suggested standards. Although the campsites are confined to a 13 acre site, the density in such area is well within that allowed by the zoning ordinance. Even if only the campsite area

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1 is considered, the density is low.

2 That portion of the property most impacted by the proposed develop-
3 ment is the campsite area. However, the intensity of use in the area is
4 limited by the number of campsites allowed. Because that number is
5 relatively low, it follows that the intensity of use will also be low.

6 VII

7 Official notice is taken of the Snohomish County Master Program
8 approved on December 27, 1974 and on file with the Department of
9 Ecology.

10 VIII

11 The proposed development lies in a "Conservancy Environment." Under
12 the Conservancy designation of the master program, commercial developments
13 are not allowed except for low intensity recreational developments which
14 do not substantially change the character of the environment. Residences
15 are allowed therein under certain circumstances. Also allowed therein
16 are recreational uses of a low intensity variety.

17 The proposed development is a commercial recreational development
18 and use of a low intensity variety.

19 IX

20 Appellant presented no evidence that would show non-compliance
21 with the State Environmental Policy Act, chapter 43.21C RCW.

22 X

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.

25 From these Findings the Shorelines Hearings Board comes to these

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of this proceeding.

II

The residential portions of the proposed development have not been shown to be inconsistent with the master program and Shoreline Management Act.

III

The proposed development of the campsite and parking areas is inconsistent with the policy section of the master program for recreation use activities in that adequate public access to the shorelines is not assured by the permit conditions although such access is an important aspect of the entire project. In particular, the parking lot in element 2 is not required although it is used by the permittee to promote the project. Additionally, there is no provision in the permit for public access to the Skykomish River from such parking lot although it is also used to promote the project. In other respects, the proposed development has not been shown to be inconsistent with the master program designation for a recreation use activity in a Conservancy Environment.

IV

The Shoreline Management Act provides that its ". . . policy contemplates protecting against adverse effects to the public health" The proposed development as presently conditioned is inconsistent with RCW 90.58.020 in that there is a lack of any require-

1 ment to warn the public of the hazardous nature of the river.

2 V

3 RCW 90.58.020 provides in part that:

4 . . . The department, in adopting guidelines for
5 shorelines of state-wide significance, and local government,
6 in developing master programs for shorelines of state-wide
7 significance, shall give preference to uses in the following
8 order of preference which:

9 (1) Recognize and protect the state-wide interest
10 over local interest;

11 (2) Preserve the natural character of the shoreline;

12 (3) Result in long term over short term benefit;

13 (4) Protect the resources and ecology of the
14 shoreline;

15 (5) Increase public access to publicly owned areas of
16 the shorelines;

17 (6) Increase recreational opportunities for the
18 public in the shoreline;

19

20 In the implementation of this policy the public's oppor-
21 tunity to enjoy the physical and aesthetic qualities of natural
22 shorelines of the state shall be preserved to the greatest
23 extent feasible consistent with the overall best interest of
24 the state and the people generally. To this end uses shall be
25 preferred which are consistent with control of pollution and
26 prevention of damage to the natural environment, or are unique
27 to or dependent upon use of the state's shoreline. Alterations
of the natural condition of the shorelines of the state, in
those limited instances when authorized, shall be given priority
for single family residences, ports, shoreline recreational
uses including but not limited to . . . improvements facilitating
public access to shorelines of the state . . . and other develop-
ment that will provide an opportunity for substantial numbers of
the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be
designed and conducted in a manner to minimize, insofar as
practical, any resultant damage to the ecology and environment
of the shoreline area and any interference with the public's
use of the water.

For the reasons given in Conclusion of Law III above, the proposed
development is inconsistent with RCW 90.58.020 relating to public
access. The proposed development is also not designed and to be
conducted in a manner which would minimize any resultant damage to the

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ecology and the environment in that there is no sufficient assurance (other than a forest management provision) that the trees and vegetation be preserved and/or replaced insofar as practicable.

The proposed development if conditioned as provided by this Board would be consistent with the Shoreline Management Act. Although not water dependent, it is a priority shoreline recreational use which will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. A campground which is privately owned nonetheless offers public recreational opportunities where all members of the public are admitted by payment of a user fee. Although a parking lot is required by this Board, the resulting adverse impact on the intensity of use of the shoreline would promote a corresponding public interest, i.e., that of public access to the shoreline.

VI

The proposed development would be consistent with the Act if conditions in the nature of the following are added to the permit:

1. Construction of a one-half acre pay parking lot in element 2 shall be made mandatory rather than permissive in the permit. No overnight parking shall be allowed therein.

2. Construction of a public pedestrian pathway to the Skykomish River from the parking lot shall be provided to the extent that such is feasible. No charge shall be made for using the pathway. (See Exhibit R-1, p. 130, paragraph 10)

3. Signs warning of danger to human life and prohibiting the launching of boats or other flotation devices shall be posted at all points of access to the river.

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1 4. Trees and other vegetation shall be preserved and/or replaced
2 to the maximum extent practicable in elements 1 (campground) and 4
3 (recreation and open space).

4 VII

5 Any Finding of Fact which should be deemed a Conclusion of Law
6 is hereby adopted as such.

7 From these Conclusions the Board makes and enters the following
8 ORDER

9 The permit is remanded to Snohomish County to add conditions to
10 the permit consistent with Conclusion of Law VI of this decision.

11 DATED this 17th day of January, 1977.

12 SHORELINES HEARINGS BOARD

13 Art Brown
14 ART BROWN, Chairman

15 Robert E. Beatty
16 ROBERT E. BEATY, Member

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Rod Kerslake
20 ROD KERSLAKE, Member

21 Chris Smith
22 CHRIS SMITH, Member

23 (Did not participate)
24 RALPH A. BESWICK, Member